

Nos. 21,824 and 21,824-A
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,
Appellant and Cross-Appellee,
vs.
JOE R. RAMOS and MARY RAMOS,
Appellees and Cross-Appellants.

PETITION FOR REHEARING

FILED

JUN 10 1968

WM. B. LUCK, CLERK

JASPER C. De I
JEROME A. DUFF

1010 B Street
San Rafael,

Attorneys for
and Cross-Appellants



'Nos. 21,824 and 21,824-A

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Appellant and Cross-Appellee,

VS.

JOE R. RAMOS and MARY RAMOS,

Appellees and Cross-Appellants.

PETITION FOR REHEARING

TO: THE UNITED STATES COURT OF APPEALS FOR THE

COME now JOE R. RAMOS and MARY RAMOS, appellants, and respectfully petition the above Court to grant a rehearing in this matter. Petitioners contend that the above entitled Court in reaching its decision in 1968, has rejected the rule set forth by the Supreme Court in the Culbertson case (Comm. v. Culbertson, 337 U.S. 491). It is petitioners' contention that the following case of Culbertson v. Comm., 168 F. 2d 979, is applicable to this situation:

"To conclude in this case that the purpose of an aging father to enlist the interservices of his four ranch-reared, experienced stalwart sons in the carrying on of his and partner's life work was not for the partner's benefit seems to require the exaltation of



1 of the times for tax collection neither deserve
2 nor demand.

3 'Neither the Constitution, the Statutes,
4 nor public policy requires that partnerships
5 between fathers and sons be outlawed or discouraged.
6 The desire of a father in any age or clime, with a
7 business that he cherishes and a son that he loves,
8 to have such son with him in his business and to
9 carry it on when he no longer can, was not rendered
10 an anathema by the Lusthaus and Tower cases, and
11 aberrations from the salutary rules announced in
12 those cases should not now do so.' "

13 The Court, at page 742 further stated the yard stick by
14 which a family partnership is to be admeasured:

15 "The question is not whether the services or
16 capital contributed by a partner are of sufficient
17 importance to meet some objective standard supposed-
18 ly established by the Tower case, but whether, con-
19 sidering all the facts--the agreement, the conduct of
20 the parties in execution of its provisions, their
21 statements, the testimony of disinterested persons,
22 the relationship of the parties, their respective
23 abilities and capital contributions, the actual
24 control of income and the purposes for which it is
25 used, and any other facts throwing light on their
26 true intent--the parties in good faith and acting
with a business purpose intended to join together
in the present conduct of the enterprise."

1 This Court makes account of the fact that transactions are
2 found to have been conducted in the year 1956 in the name of
3 Joe R. Ramos. What does the record show? Importantly, it shows
4 the Government admits a good faith intent on the part of the
5 Ramos family in the foundation of the partnerships. If good
6 faith is conceded and the uncontradicted testimony of the
7 plaintiffs and their witnesses have established that the
8 partnership was to become effective commencing January 1, 1956,
9 how may the admission of good faith be consistently reconciled

1 with a rejection of the evidence when the partnership was in
2 truth and in fact established and in active operation?
3 Similarly, if good faith on the part of the Ramos family be
4 admitted, it may not be seriously contended that the parents
5 controlled the income producing properties. The record shows
6 without contradiction that the use of the trees, lands and
7 equipment were part and parcel of the partnership assets and
8 clearly intended to be such by the partners. This is borne
9 out by the salient fact that Joe R. and Mary Ramos received
10 rent for the use of these items in the year 1957, and took
11 an added 25% of the net profits during the year 1956 in lieu
12 of rent. The critical factor to be determined is that the
13 beneficial ownership and not the technical legal title inured
14 to the members of the partnership. The record is likewise
15 replete with evidence showing that control of the said trees,
16 lands and equipment was vested solely in the partnership and not
17 retained by the parents.

18 Kuney v. Frank, 308 F. 2d 719, relied upon by this Honor-
19 able Court, is completely at variance on its facts with the
20 uncontradicted facts established in the instant case. This
21 case may not properly be considered.

22 For this Court's opinion to hold that no partnership was
23 formed or in operation for the calendar year 1957, is to com-
24 pletely thrust aside the entire evidence adduced by petition-
25 ers and which evidence is without dispute. This error is
26 further compounded by the failure of this Honorable Court to



1 take into consideration that the Government completely failed
2 to negate any of the testimony with reference to the 1957
3 partnership, as well as to the 1956 partnership. We have the
4 Government's affirmative statement that "The particular facts
5 are virtually undisputed as supported by the record evidence."
6 (II-54,217-218).

7 It is respectfully contended that this Court's decision is
8 further erroneous in that it has cast aside basic appellate
9 law that the Court of Appeals shall not properly re-try issues
10 of fact or substitute its judgment with respect to such issues
11 for that of the United States District Court, and further that
12 this Court shall not properly set aside findings of fact of the
13 District Court unless there is no substantial evidence to sus-
14 tain it, unless it is against the clear weight of the evidence,
15 or unless it was adopted by an erroneous view of the law. This
16 salutary rule of practice has been adhered to in the case of
17 General Casualty Co. of America v. School District No. 5, 233
18 F. Rep. p. 526. What this Court has attempted to do is to sub-
19 stitute the findings of fact of the trial court, which is at
20 complete variance with established law.

21 CONCLUSION

22 In view of the record developed at the trial of this case,
23 and in view of the law as enunciated by the guiding case of
24 Culbertson and the line of cases following Culbertson, and the
25 irresistible conclusion that the trial court's findings and
26 conclusions are supported by competent, relevant and material

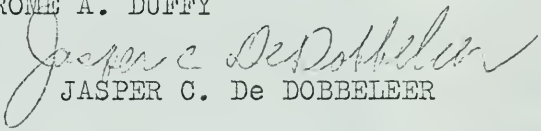
1 evidence and testimony, uncontradicted by the Government, re-
2 quires a rehearing of this cause so that substantial justice
3 may be accomplished in light of the record of this case.

4 Dated at San Rafael, California, June 7, 1968.

5 Respectfully submitted,

6 JASPER C. De DOBBELEER
7 JEROME A. DUFFY

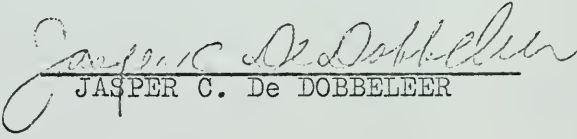
8 By


JASPER C. De DOBBELEER

9 Attorneys for Appellees and
10 Cross-Appellants.

11 CERTIFICATE OF COUNSEL

12 I, the undersigned, one of the attorneys of record, hereby
13 certify that the points set forth in this Petition for Re-
14 hearing are meritorious and that the Petition for Rehearing
15 is being sought in good faith.

16 
17 JASPER C. De DOBBELEER
18
19
20
21
22
23
24
25
26



- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26

Mitchell Rogovin, Esq.
Assistant Attorney General
Department of Justice
Washington, D.C. 20530

Cecil F. Poole, Esq.
United States Attorney
Attention: Richard L. Carico
Asst. United States Attorney
450 Golden Gate Avenue
San Francisco, California 94102

Executed on June 7, 1968, at San Rafael, California.

ALICE HALL

